

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 238 of 2000

in

SPECIAL CIVIL APPLICATION No 4981 of 1998

AND

LETTERS PATENT APPEAL NO. 271 OF 2000

in

SPECIAL CIVIL APPLICATION NO. 4984 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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XAVIER KELAVANI MANDAL

Versus

STATE OF GUJARAT  
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Appearance:

MR KAMAL B. TRIVEDI with MRS SK VISHEN and MR KJ MAKWANA  
for Appellant

MS HARSHA DEVANI, ld.AGP for Respondent No.1, i.e. State  
of Gujarat.

MR MAULIN RAVAL for respondent no.2, i.e. Municipal  
Commissioner of Municipal Corporation of Ahmedabad.  
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CORAM : MR.JUSTICE M.R.CALLA  
and  
MR.JUSTICE R.R.TRIPATHI

Date of decision: 28/09/2000

COMMON ORAL JUDGEMENT

These two Letters Patent Appeals are directed against the common judgment and order dated 20th April 2000 passed by the learned Single Judge in Special Civil Applications Nos.4981 and 4984 of 1998. We, therefore, propose to decide these two Letters Patent Appeals by this common judgment and order.

2. Xavier Kelavani Mandal, i.e. petitioner in Special Civil Application No.4981 of 1998 and the Ahmedabad Jesuits School Society, i.e. petitioner in Special Civil Application No.4984 of 1998 claiming to the registered Public Trusts under the Bombay Public Trusts Act, 1950 have filed the respective Special Civil Applications. Xavier Kelavani Mandal claims exemption from payment of general tax in respect of St.Xavier's Primary School under Section 132 of the Bombay Provincial Municipal Corporations Act, 1949 and exemption from payment of Education Cess under Section 13 of the Gujarat Education Cess Act for its primary school which is the only school run by the said Trust. The Ahmedabad Jesuits School Society is already exempted from payment of general tax for its Secondary and Higher Secondary Schools but is required to pay Education Cess and therefore, it claims exemption from payment of Education Cess under Section 13 of the Gujarat Education Cess Act and further in respect of the Laboratory of St. Xaviers' High School. It is given out that the primary school run by Xavier Kelavani Mandal and the St.Xaviers' Secondary and Higher Secondary School of the Ahmedabad Jesuits School Society and the laboratory therein are situated in the very same compound. Both these appellants, i.e. original petitioners in respective matters are claiming exemptions as aforesaid on the ground of parity. In other words, their case is that both these petitioner Trusts are at par with the other four Institutions, viz. Mount Carmel, Gujarat Law Society, Aroma and Rajasthan Hindi High School, which are exempted from general tax as well as Education Cess. The general tax under Section 132 of the Bombay Provincial Municipal Corporations Act, 1949 as well as the Education Cess under the Gujarat Education Cess Act, 1962 are leviable by the Municipal Corporation under Section 129 of the Bombay Provincial

Municipal Corporations Act, 1949. Both these petitioners come with a case that for the purpose of exemptions sought by them as above, their case is exactly identical to the four Institutions which have been exempted and therefore, they too should have been granted similar exemption and they seek to enforce the right of equality before the law or equal protection of laws and equal treatment as envisaged under Article 14 of the Constitution of India.

3. The learned Single Judge in the common judgment and order dated 20th April 2000, after carefully considering the rival contentions of the parties, has observed in para 9 that, whether any institution is also carrying on trade or business and earning profit or gain on its building or land or its portion or the institution is running solely for charitable purpose is a question of fact which can be determined by appropriate court and as per the observations made by the Division Bench of this Court in the case of Gujarat Vidya Sabha v. Municipal Corporation of the City of Ahmedabad reported in 1995(1) GLR 419, the issue can be decided by the Small Causes Court on the basis of the evidence led by the parties and that this Court in writ jurisdiction should refrain from recording any finding on the disputed questions of facts. The learned Single Judge has then referred to the balance sheets, receipts and payments for the year ending 31st March 1994 as pointed out by the Municipal Corporation to show that surplus income after the expenditure is transferred to the management account and that amount comes to Rs.3,42,160, extra fees of Rs.1,20,881/-, management income, canteen contract rent of Rs.3,750/per month, Bank interest of Rs.28,053/- and admission charges of Rs.14,053/- from staff and miscellaneous income of Rs.1,52,726/-, cumulative interest on FDR of Rs.24,690/besides other balance and FDR and an amount of Rs.1,52,726/- was transferred to the management. All these figures relate to the Ahmedabad Jesuits School Society. Thus, having held that disputed questions of facts could not be gone into in writ jurisdiction and that this Court in writ jurisdiction should refrain from recording any finding on disputed questions of facts, has then observed in the ultimate para of the judgment that the petitioner Trusts are also carrying on trade or business and are earning profit from canteen rent, interest and other charges and huge amount is transferred to the Trust and Management and thus the property of the petitioner Trusts is not being used solely for charitable purpose and therefore, the petitioners are not entitled for exemption claimed by them and in this view of the matter, he has found that these petitions have no merit

and are liable to be dismissed and accordingly the petitions have been dismissed.

4. Mr.Kamal Trivedi, learned Counsel for the appellants has submitted that the judgment suffers from inherent contradiction and inconsistency because having observed that there were disputed questions of facts, the Court may have refrained from recording any finding on disputed questions of facts in writ jurisdiction as the matter was required to be considered and decided before the appropriate forum. The learned Single Judge has also given findings on merits and has held in no uncertain terms that the petitioner Trusts are not entitled to exemptions claimed by them.

5. We do find that once the learned Single Judge had found that there were disputed questions of facts and had himself mentioned that this Court under writ jurisdiction should refrain from recording any finding on disputed questions of facts, he may not have gone into the merits of the case on the basis of the figures pointed out by the Municipal Corporation and the finding on merits could be avoided, lest, these findings may come in the way of the appellant Trusts even if such disputed questions of facts are sought to be adjudicated before an appropriate forum as mentioned by the learned Single Judge himself in the body of the order. We do find that recording of such a finding on merits in the facts of the present case was not at all essential in view of the finding of the learned Single Judge himself that the controversy between the parties involved disputed questions of facts. However, during the course of arguments, Mr.Kamal Trivedi appearing on behalf of the appellants has submitted that the original petitioner Trusts are only seeking parity with the other institutions which have been rendered exemption and for the purpose of establishing a case as to whether the case of the present appellants, i.e. original petitioner Trusts is comparable with the other institutions which have been granted similar exemptions, he may now approach the concerned authorities.

6. Learned Asstt.Govt.Pleader Ms.Harsha Devani has pointed out that whether the general tax is to be charged or not is to be decided by the Municipal Corporation itself in accordance with Section 132 of the Bombay Provincial Municipal Corporations Act to be levied under Section 129 and for Education Cess under the Gujarat Education Cess Act, 1962, a notification has already been issued by the Finance Department of the Govt. of Gujarat on 24th December 1963 under the Gujarat Education Cess Act, 1962 and whether the Education Cess is to be levied

or to be exempted is again a question to be decided by the Municipal Corporation in accordance with the provisions of the relevant Act.

7. We, therefore, leave it open for the appellant Trusts in both these matters to make a proper representation before the competent authority of the Municipal Corporation for the purpose of making out a case for exemptions claimed by them on the ground of parity with the other institutions which have already been exempted. Should the appellant Trusts herein place adequate, relevant and cogent material before the competent authority for the purpose of such exemptions, the authority shall objectively examine such representation along with the material placed on record by the appellant Trusts and decide as to whether the appellant Trusts are also entitled to exemptions sought for by them at par with the other institutions or not. Such exercise shall be completed by the competent authority of the Municipal Corporation of Ahmedabad itself within a period of one month from the date any such representation is made by the appellant Trusts. While we agree with the view taken by the learned Single Judge that such disputed questions of facts cannot be decided in writ jurisdiction, the finding given by the learned Single Judge on merits cannot be held to be justified and both these findings cannot go together and therefore, the impugned judgment and order dated 20th April 2000 passed by the learned Single Judge is hereby set aside and the appellants are relegated to the remedy of making a representation before the competent authority of the Municipal Corporation as directed above and only to that extent, these appeals are allowed.

8. In both these matters, in the respective Civil Applications Nos.4875 and 5315 of 2000, we had passed interim orders on 26th June 2000 and 18th September 2000 while issuing Rule in the Civil Applications that, the water connection in the premises of the appellants shall not be disconnected only on the ground that it had not paid the due amount of Cess and subject to the condition that the appellants go on paying the current monthly dues. Whereas the impugned order passed by the learned Single Judge has been set aside and the appellants have been relegated to the remedy of making representation before the concerned authority, we hereby direct that till the time the concerned authority decides the question of exemption with regard to the general tax as well as Education Cess, the water connection in the premises of the appellant Trusts shall not be disconnected only on the ground that any amount is due

against the general tax and or Education Cess and subject to the condition that the appellant Trusts shall go on paying the current dues till the representation of the appellant Trusts is decided by the competent authority, and further that the aforesaid relief shall continue for a further period of one month from the date of the order to be passed by the concerned authority, if such order goes against the appellants. Rule in each of these two Civil Applications stand discharged accordingly.

9. Both these appeals are allowed in part as above. In the facts and circumstances of these cases, the parties are left to bear their own costs.

(M.R. Calla, J.)

(R.R.Tripathi,J.)

Sreeram.